

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

Griselda Ankele,  
Plaintiff,  
v.  
Suzanne Johnson, et al.,  
Defendants.

NO. C 04-04811 JW

**ORDER DENYING DEFENDANTS  
ADDITIONAL ATTORNEYS' FEES BUT  
GRANTING COSTS TO DEFENDANTS**

**I. INTRODUCTION**

Defendant Steven Hubert filed this motion for attorney's fees pursuant to 28 U.S.C. § 1447(c) on May 24, 2005. Defendant Suzanne Johnson filed a joinder in motion for attorney's fees on June 7, 2005. Based on all the papers filed to date, the Court DENIES Defendants' motion for award of attorneys' fees but GRANTS Defendants' request for costs under 28 U.S.C. § 1447(c).

**II. BACKGROUND**

The full background of this case is articulated in the Court's Order dated May 6, 2005. This action originated in state probate court. In July 2004, Plaintiff filed her first Notice of Removal and Complaint ("First Removal Action") (C 04-02779 JW). Plaintiff's "Complaint" asserted various constitutional and tort claims against her former attorneys, the probate referee, and the probate judge. The Court granted Defendants' Request for Remand on September 27, 2004 for several reasons, including improper removal

1 by a party who was not a “defendant” in the original state action. However, the Court denied Defendants’  
 2 Request for Costs and Fees associated with the removal proceeding. (“First Remand Order”) (Docket  
 3 Item No. 34.) The Court warned Plaintiff that she should anticipate Fed. R. Civ. P. 11 sanctions, and the  
 4 state counterpart, if she pursues claims that lack factual and or legal merit.

5 In November 2004, Plaintiff filed a writ proceeding before the Ninth Circuit Court of Appeals. In  
 6 February 2005, the Ninth Circuit denied Plaintiff’s petition for mandamus and barred submission of any  
 7 further motions for reconsideration, clarification, stay of the mandate, or any other submission.

8 As the appeal was pending, on November 12, 2004, Plaintiff filed a Notice of Removal and  
 9 Complaint (“Second Removal Action”) (C 04-04811 JW), alleging similar claims against similar parties.  
 10 On May 6, 2005, the Court granted various motions filed by the two Defendants, including, request for  
 11 remand, sanctions under Rule 11, and attorneys’ fees and costs under 28 U.S.C. § 1447(c), judicial notice,  
 12 and declaring Plaintiff to be a vexatious litigant. On June 20, 2005, this Court denied Plaintiff’s motion for  
 13 reconsideration. (See Docket No. 73.)

14 As of October 19, 2005, the Ninth Circuit Court of Appeal has denied Plaintiff’s motion to stay  
 15 this Court’s May 6, 2005 Order filed in C04-2779 JW and the June 20, 2005 Order filed in C04-4811  
 16 JW. (See Docket Item No. 82.)

17 Presently before this Court are Defendants’ motions for attorneys’ fees and costs pursuant to 28  
 18 U.S.C. § 1447(c). Plaintiff filed an opposition and also made a request for sanctions against the  
 19 Defendants on June 23, 2005.

### 20 **III. DISCUSSION**

21 As the Court discussed at length in its September 27, 2004 and May 6, 2005 Orders<sup>1</sup>, the Court  
 22 lacked jurisdiction over this action. In the Court’s May 6, 2005 Order, the Court found it appropriate to  
 23 amend costs of the improper removal on Plaintiff. Since an assessment to reimburse the injured party’s  
 24 attorneys’ fees is within the range of permissible Rule 11 sanctions, the Court concluded that a \$5,000  
 25 sanction was appropriate. The Court equally divided the amount among the two Defendants, each  
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27 <sup>1</sup>As the Court noted in the June 20, 2005 Order, its May 6, 2005 Order was mistakenly issued  
 28 under case No. C 04-02779 JW, which was Plaintiff’s first removal case. The May 6, 2005 Order may  
 be found at Docket Item No. 42 of C 04-02779.

1 receiving \$2,5000. The Court also made a further award under 28 U.S.C. § 1447(c) and invited the  
2 Defendants to submit a cost bill in accordance with the Federal Rules of Civil Procedure and the Local  
3 Rules of this Court.

4 There is no question that the Court has the power to award such fees and costs on the record  
5 before it. An order remanding a case to state court “may require payment of just costs and any actual  
6 expenses, including attorney fees, incurred as a result of the removal.” 28 U.S.C. § 1447(c). A district  
7 court may exercise its discretion to award fees and costs absent a finding of bad faith on the part of the  
8 removing party. Moore v. Permanente Medical Group, Inc., 981 F.2d 443, 446 (9th Cir. 1992). The  
9 statute itself makes no reference to the removing party’s intent or state of mind, but instead focuses solely  
10 on the mere absence of subject matter jurisdiction. Moore, 981 F.2d at 446. Additionally, since section  
11 1447(c) is not punitive and simply reimburses the non-removing party for unnecessary litigation costs, there  
12 is a more liberal standard for the award of expenses under section 1447(c) than for sanctions under Rule  
13 11. See Moore, 981 F.2d at 447 (9th Cir 1992).

14 Defendant Hubert submits a Declaration of Debra Blum to support his calculation that the defense  
15 of Plaintiff’s second removal has costed \$6,005.00, which include fees and costs, and an addition three  
16 hours at \$495.00 an hour in connection with the filing of the current motion. Defendant Hubert contends  
17 that this is in addition to the fees and costs he incurred in defending the first removal action, which came to  
18 \$6, 175.92. Defendant Johnson submits a Declaration from Kenneth Prochnow to support her calculation  
19 that the total fees and costs are \$5,5616.00. While the Court acknowledges that Plaintiff’s improper  
20 removals have costed Defendants significant amounts of fees and cost, the Court does give some deference  
21 to Plaintiff’s pro se status.

22 Since the Court has already sanctioned Plaintiff under Rule 11 for \$5000, the Court finds that it is  
23 unnecessary to punish Plaintiff with additional awards of attorneys’ fees. Though an award under section  
24 1447(c) is intended to reimburse the non-removing party, Plaintiff’s status as a pro se makes any additional  
25 awards punitive. Additionally, a careful review of the Court’s May 6, 2005 Order, shows that the Court  
26 did not intend to award attorneys’ fees under section 1447(c). While the Court readily discussed its  
27 willingness to award the \$5000 attorneys’ fees as sanctions under Rule 11, the Court merely invited the  
28 Defendants to make an accounting of their costs resulting from having to defend Plaintiff’s improper

1 removal and ordered the Defendants to submit such cost bill in accordance with the rules of Court. (See  
2 Order at 12.)

3 **IV. CONCLUSION**

4 For the reasons stated above, the Court declines to award additional attorneys' fees but does  
5 award reasonably costs to Defendants. Defendants shall submit a cost bill for the defense of the second  
6 removal action in accordance with the Federal Rules of Civil Procedure and the Local Rules of this Court.

7  
8 Dated: October 31, 2005

9 /s/ James Ware  
10 JAMES WARE  
11 United States District Judge  
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**THIS IS TO CERTIFY THAT COPIES OF THIS ORDER HAVE BEEN DELIVERED TO:**

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**Dated: October 31, 2005**

**Richard W. Wicking, Clerk**

**By: /s/ JW Chambers**

**Ronald L. Davis  
Courtroom Deputy**